A

TECHNOINTAN HOLDING SDN BHD

v.

TETUAN TAN KIM SIONG & TEH HONG JET

B

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[PETITION NO: MT1-26-5-2005]
17 AUGUST 2006

C ***CIVIL PROCEDURE:*** *Striking out - Application for - Petition - Petition presented beyond six month limitation - Legal Profession Act 1976, s. 126 - Whether unmaintainable - Whether cause of action lapsed and extinguished - Whether no reasonable cause of action - Whether petition rendered scandalous, frivolous and vexatious - Whether an abuse*
D *of court process - Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (d)*

The respondents, a firm of solicitors, ('the solicitors') were retained by the petitioner to represent it in four civil actions ('the four civil
E actions'). The solicitors informed the petitioner that the legal fee for the labour court summons was RM15,000 and for the sessions court matter, the legal fee was from RM15,000 to RM20,000. The petitioner alleged that it had made a total payment of RM48,532.80 to the solicitors. Subsequently, the petitioner
F expressed dissatisfaction with the solicitors' bills. On 31 May 2005, the solicitors served on the petitioner a notice under s. 218 of the Companies Act 1965 ('the s. 218 notice') demanding payment of the sum of RM49,138.14 ('the disputed fee') within 21 days thereof, failing which the solicitors would commence
G winding up petition against the petitioner. The petitioner vehemently denied the solicitors' bills and requested the solicitors to withdraw the s. 218 notice. Pursuant to s. 126 of the Legal Profession Act 1976 (s. 126) the petitioner filed the petition in encl. 2. The solicitors, *vide* application by way of summons in
H chambers in encl. 5 filed pursuant to O. 18 r. 19(1)(a), (b) or (d) of the Rules of the High Court 1980 sought an order that the petitioner's petition in encl. 2 be struck out with costs on the ground that: (1) it disclosed no reasonable cause of action; (2) it was scandalous, frivolous or vexatious and (3) it was otherwise an
I abuse of the process of the court.

Held (order in terms of solicitors' application in encl. 5):

(1) The solicitors' bills dated 17 August 2004, 22 October 2004 and 30 November 2004 were received by the petitioner on 20 August 2004, 27 October 2004 and 7 December 2004 respectively, while this petition was only filed on 14 July 2005. The petition being presented beyond the six month limitation prescribed in s. 126(1) was conspicuously unmaintainable as the petitioner's cause of action against the solicitors had lapsed and extinguished, thereby disclosing no reasonable cause of action and attracting the application of O. 18 r. 19(1)(a) RHC. (paras 16, 21 & 25)

(2) Given that the petition herein had been found to be statute barred under s. 126(1), there could be no two views that the petition had been rendered scandalous in the sense of being wholly unnecessary or irrelevant; or frivolous or vexatious in the sense of being obviously unsustainable, within the four corners of O. 18 r. 19(b) RHC. (para 31)

(3) The petitioner had taken the initiative to present this petition and so it was natural for the petitioner's counsel to satisfy the court of the merits thereof. However, that was not to be the case. Instead, what had been demonstrated was a lackluster stand. This, together with the unmaintainability of the petition on the ground that it was statute barred, was a plain and obvious illustration of an abuse of the process of the court, thereby fitting the description contained in O. 18 r. 19(1)(d) RHC. (para 33)

Case(s) referred to:

Boey Ai Leng v. Trans Resources Corporation Sdn Bhd [2002] 1 CLJ 405 HC ***(refd)***

Cybersoft Sdn Bhd v. Standard Chartered Bank [2000] 1 LNS 74 ***(refd)***

Datuk Ir Che Amran Mohd Yusoff v. Yayasan Melaka & Ors [2003] 1 CLJ 767 HC ***(refd)***

Mohamed Nazri Abdul Aziz v. Abu Samah Hj Wahab & Another (Civil Suit No: 22-143-2002) (Unreported) ***(refd)***

Peng Bee Sdn Bhd v. Teoh Liang Teh & Ors [2000] 4 CLJ 825 CA ***(refd)***

Tan Sri Dato' Eric Chia Eng Hock v. NKK Corporation (Japan) [2004] 7 CLJ 137 HC ***(refd)***

Vun Chun Fah & Anor v. Telekom Malaysia Berhad [1997] 1 LNS 165 HC ***(refd)***

Legislation referred to:
Companies Act 1965, s. 218
Legal Profession Act 1976, s. 126(1)
Limitation Act 1953, s. 9
Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (d)

For the petitioner - William Edwin; M/s Tee & Edwin
For the respondent - Tan Hwee Hwee (Teh Hong Jet with him); M/s Tan Kim Siong & Teh Hong Jet

Reported by Suhainah Wahiduddin

JUDGMENT

Low Hop Bing J:

Application

[1] The respondents, a firm of solicitors ("the solicitors") *vide* application by way of summons in chambers in encl (5) filed pursuant to O. 18 r. 19(1)(a), (b) or (d) of the Rules of the High Court 1980 seek an order that the petitioner's petition in encl (2) be struck out with costs on the ground that:

(a) it discloses no reasonable cause of action;

(b) it is scandalous, frivolous or vexatious; or

(c) (not relevant); or

(d) it is otherwise an abuse of the process of the court.

Factual Background

[2] In or about the month of October 2003, the solicitors were retained by the petitioner to represent the petitioner in four civil actions *viz* Melaka Sessions Court Summonses No. 52-1411 to 1413-2003; and Melaka Labour Court Summons No. 324/2003 (collectively, "the four civil actions").

[3] The four civil actions were in connection with foreign workers from India, who had alleged *inter alia* breach of contract on the part of the petitioner.

[4] On 1 November 2003, the petitioner asked the solicitors for the total cost of the retainer for the four civil actions.

[5] The solicitors *vide* letter dated 2 December 2003 informed the petitioner that the legal fee for the Labour Court Summons was RM15,000 and for the Sessions Court matter, the legal fee was from RM15,000 to RM20,000.

[6] From time to time, interim bills sent by the solicitors to the petitioner had been settled by the petitioner.

[7] From 20 August 2004 to 3 November 2004, the petitioner received gross bills amounting to RM45,684.35 for the four civil actions.

[8] On 7 December 2004, the petitioner received another bill for RM1,040 together with the solicitors' letter dated 30 November 2004.

[9] The petitioner alleged having made a total payment of RM48,532.80 to the solicitors as at 9 July 2004.

[10] *Vide* letter dated 15 February 2005, the petitioner expressed dissatisfaction with the solicitors' bills.

[11] The petitioner *vide* letter dated 18 April 2005 stated that the petitioner was agreeable to a taxation of the costs as a resolution to the disputed fees.

[12] However, on 31 May 2005, the solicitors served on the petitioner a notice under s. 218 of the Companies Act 1965 ("the s. 218 notice") demanding payment of the sum of RM49,138.14 ("the disputed fee") within 21 days thereof, failing which the solicitors would commence winding-up petition against the petitioner.

[13] The petitioner *vide* letter dated 14 June 2005 vehemently denied the solicitors' bills and requested the solicitors to withdraw the s. 218 notice.

[14] On 8 June 2005, the petitioner deposited the disputed fee with the petitioner's solicitors Messrs Tee & Edwin, to be released only upon taxation of the disputed fee.

[15] Pursuant to s. 126 of the Legal Profession Act 1976 (s. 126), the petitioner filed this petition in encl (2) on 14 July 2005.

No Reasonable Cause Of Action

[16] Learned counsel Miss Tan Hwee Hwee, assisted by Mr. Teh Hong Jet, submitted for the solicitors that the petitioner has no reasonable cause of action as the petitioner was out of time under s. 126(1) since the solicitors' bills dated 17 August 2004, 22 October 2004 and 30 November 2004 were received by the petitioner on 20 August 2004, 27 October 2004 and 7 December 2004 respectively, while this petition was only filed on 14 July 2005. The following authorities were cited:

1. *Peng Bee Sdn Bhd v. Teoh Liang Teh & Ors* [2000] 4 CLJ 825 CA; and

2. *Vun Chun Fah & Anor v. Telekom Malaysia Berhad* [1997] 1 LNS 165 HC.

[17] Opportunity was afforded to the petitioner's learned counsel Mr. William Edwin to file his written submission but he did not appear to have availed himself of that opportunity.

[18] The issue for determination by me is whether the petitioner is barred by the limitation period to present the petition. The relevant portion of s. 126(1) merits reproduction as follows:

> 126(1) An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost ... to the advocate and solicitor, at any time within six months from the delivery of the bill, ...

[19] As the petitioner is the party chargeable with the bill of costs or is the person liable to pay the costs to the advocates and solicitors *viz*. the solicitors herein, the petitioner must within six months from the delivery of the bills present a petition to obtain an order for taxation pursuant to s. 126(1).

[20] In relation to the solicitors' bills, the time frame for the purposes of s. 126(1) may be tabulated as follows:

Delivery of the bill	Petition on or before
20 August 2004	20 February 2005
27 October 2004	27 April 2005
7 December 2004	7 June 2005

[21] The instant petition presented on 14 July 2005 is beyond the six months limitation prescribed in s. 126(1), being between five weeks and five months out of time respectively.

[22] In my view, in order to maintain the petition, the petitioner should have presented the petition within the six-month time frame imposed by s. 126(1). A petition presented beyond this limitation period would undoubtedly arm the solicitors with an absolute defence. A petition under s. 126(1) must therefore be presented timeously.

[23] Where the limitation period prescribed in a statute has set in, an action would be rendered statute barred, as illustrated in *Peng Bee Sdn Bhd, supra*, where the plaintiff's action was filed more than 12 years after the cause of action arose and was statute barred pursuant to s. 9 of the Limitation Act 1953. Shaik Daud Ismail JCA (as he then was), delivering judgment for the Court of Appeal, affirmed the concurrent decision of the learned registrar and judge of the High Court in striking out the action under O. 18 r. 19(1) on the ground that it was unmaintainable.

[24] Another illustration is to be found in *Vun Chun Fah, supra*, where the plaintiff's statute barred action was struck out by Ian HC Chin J who heard the appeal from the decision of the learned magistrate.

[25] It is abundantly clear that the petition being presented beyond the six month limitation prescribed in s. 126(1) is conspicuously unmaintainable as the petitioner's cause of action against the solicitors had lapsed and extinguished, thereby disclosing no reasonable cause of action and attracting the application of O. 18 r. 19(1)(a).

Scandalous, Frivolous Or Vexatious

[26] The solicitors also relied on O. 18 r. 19(1)(b) in support of their submission that this time barred petition is scandalous frivolous and vexatious, referring to:

(1) *Cybersoft Sdn Bhd v. Standard Chartered Bank* [2000] 1 LNS 74;

(2) *Tan Sri Dato' Eric Chia Eng Hock v. NKK Corporation (Japan)* [2004] 7 CLJ 137 HC; and

(3) *Mohamed Nazri bin Abdul Aziz v. Abu Samah bin Hj. Wahab And Another* Civil Suit Melaka High Court Civil Suit No. 22-143-2002.

[27] There was no response by the petitioner's learned counsel to the above submission.

[28] I have on several occasions explained the ambit and purview of the words "scandalous, frivolous or vexatious" in O. 18 r. 19(1)(b). Scandalous means wholly unnecessary or irrelevant, while "frivolous and vexatious" mean obviously unsustainable: see *Mohamed Nazri, supra; Boey Ai Leng v. Trans Resources Corporation Sdn Bhd* [2002] 1 CLJ 405 and *Datuk Ir Che Amran Mohd Yusoff v. Yayasan Melaka & Ors* [2003] 1 CLJ 767.

[29] In *Cybersoft Sdn Bhd, supra,* Sulaiman Daud JC (now J) struck out the plaintiff's action which was filed six months and seven days beyond the prescribed limitation period of six years.

[30] Where the plaintiff's defamation action was filed out of time by one year, as in *Tan Sri Dato Eric Chia Eng Hock, supra,* Hishamudin Yunus J affirmed the learned registrar's decision in striking it out as being frivolous, vexatious and an abuse of the process of the court.

[31] Given that the petition herein has been found to be statute barred under s. 126(1), there can be no two views that the petition has been rendered "scandalous" in the sense of being wholly unnecessary or irrelevant; or "frivolous or vexatious" in the sense of being obviously unsustainable, within the four corners of O. 18 r. 19(1)(b).

Abuse Of The Process Of The Court

[32] This is the final ground relied on by the solicitors.

[33] Notwithstanding my direction to the petitioner's learned counsel to file a written submission to assist me in the determination of the application herein, there is an absence of the submission. It needs to be observed that the petitioner had taken the initiative to present this petition and so it is natural for the petitioner's learned counsel to satisfy the court of the merits thereof. However, that was not to be the case. Instead, what had been demonstrated was a lacklustre stand. This, together with the unmaintainability of the petition on the ground that it is statute

barred, is in my view a plain and obvious illustration of an abuse of the process of the court, thereby fitting the description contained in O. 18 r. 19(1)(d).

Conclusion

[34] On the foregoing grounds, I hold that the solicitors had succeeded in establishing the grounds under O. 18 r. 19(1)(a), (b) or (d). I therefore make an order in terms of the solicitors application in encl (5).